

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

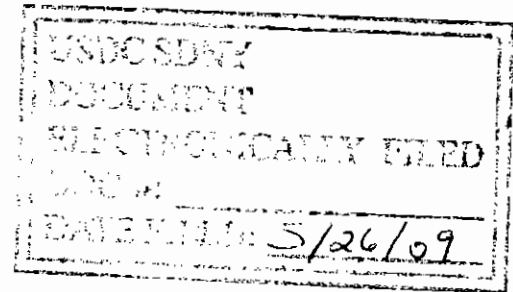
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ATHLETE'S FOOT BRANDS, LLC,

Plaintiff,

- against -

J.H.P. EAST FORDHAM, INC.,
J.H.P. FLUSHING, INC.,
J.H.P. NEWARK, INC.,
PJH GRAND CONCOURSE, INC.,
HP THIRD AVE., INC.,
IBJAMAICA, INC., and
JANG PARK,

Defendants.
-----X



Order

08 Civ. 11027 (LLS)

Plaintiff having filed a motion on April 23, 2009 to dismiss defendants' original counterclaims (except Count XI) under Fed. R. Civ. P. 9(b) and 12(b)(6), and defendants having filed amended counterclaims as of right on May 21, 2009,¹ the motion (Docket No. 52) is dismissed as moot, without prejudice.

So Ordered.

Dated: New York, NY
May 26, 2009

Louis L. Stanton
LOUIS L. STANTON
U.S.D.J.

¹ See Fed. R. Civ. P. 15(a)(1)(A) (a "party may amend its pleading once as a matter of course . . . before being served with a responsive pleading"); Blazon, Inc. v. DeLuxe Game Corp., 268 F. Supp. 416, 430 (S.D.N.Y. 1965) ("Plaintiff's motion to dismiss the counterclaim was not such a responsive pleading and thus did not terminate [defendant's] right to amend under Rule 15(a).").